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Supreme Court, U.S.
FILED

DEC 19 1987

JOSEPH F. SPANIO, JR.
CLERK

COURT OF APPEAL OF CALIFORNIA
SECOND APPELLATE DISTRICT

EUNICE RUSSELL,

Petitioner,

v.

CASE NO. _____

SUPERIOR COURT OF
THE COUNTY OF LOS
ANGELES

(ROBERT H. FRASER,
REAL PARTY IN
INTEREST

Respondent)

PETITION FOR WRIT OF CERTIORARI TO COURT OF
APPEAL OF CALIFORNIA
SECOND APPELLATE DISTRICT

The Petitioners Eunice Russell and Willie Jean Russell

EUNICE RUSSELL

and

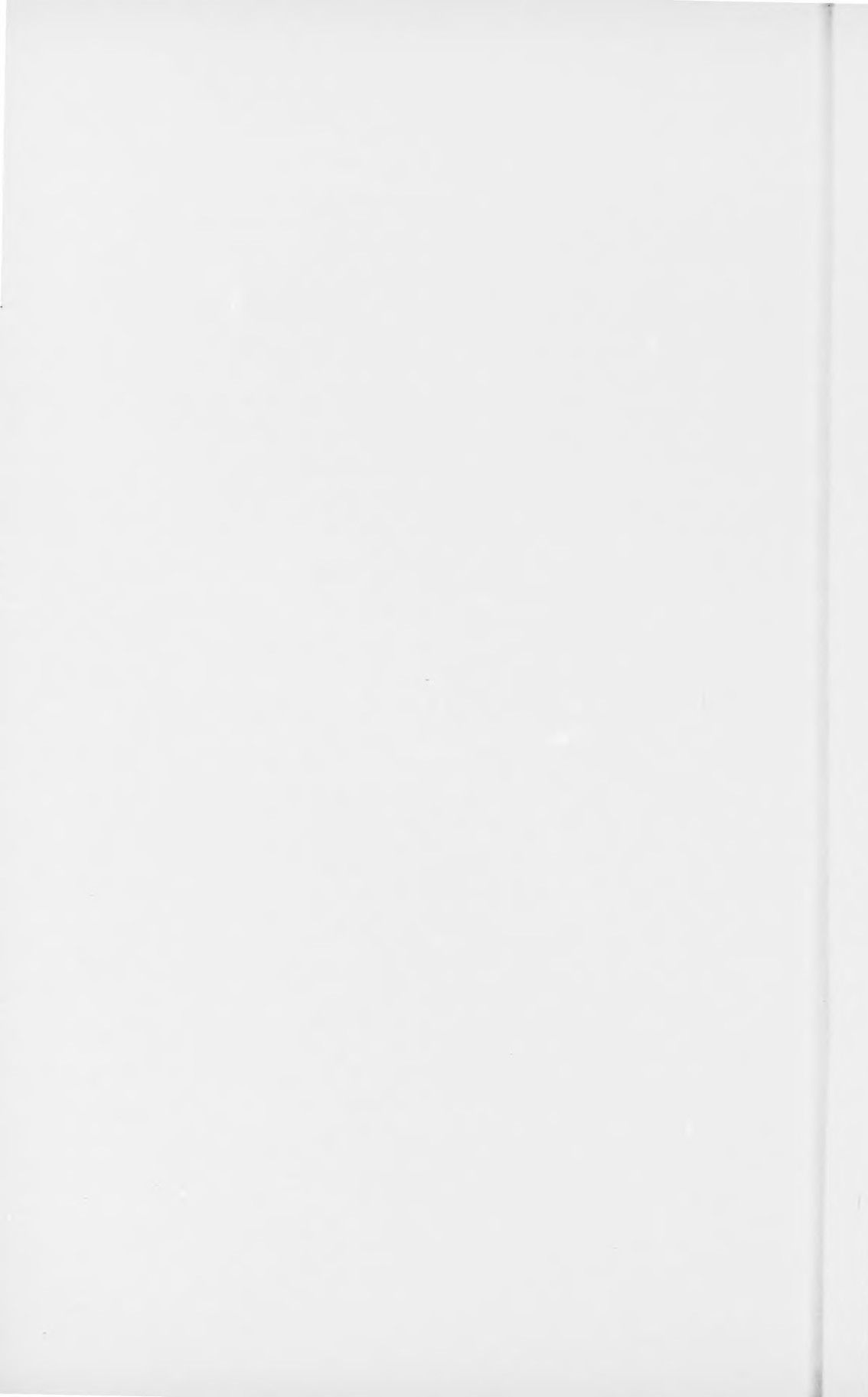
WILLIE JEAN RUSSELL

1160 Val Vista Street

Pomona, California 91768

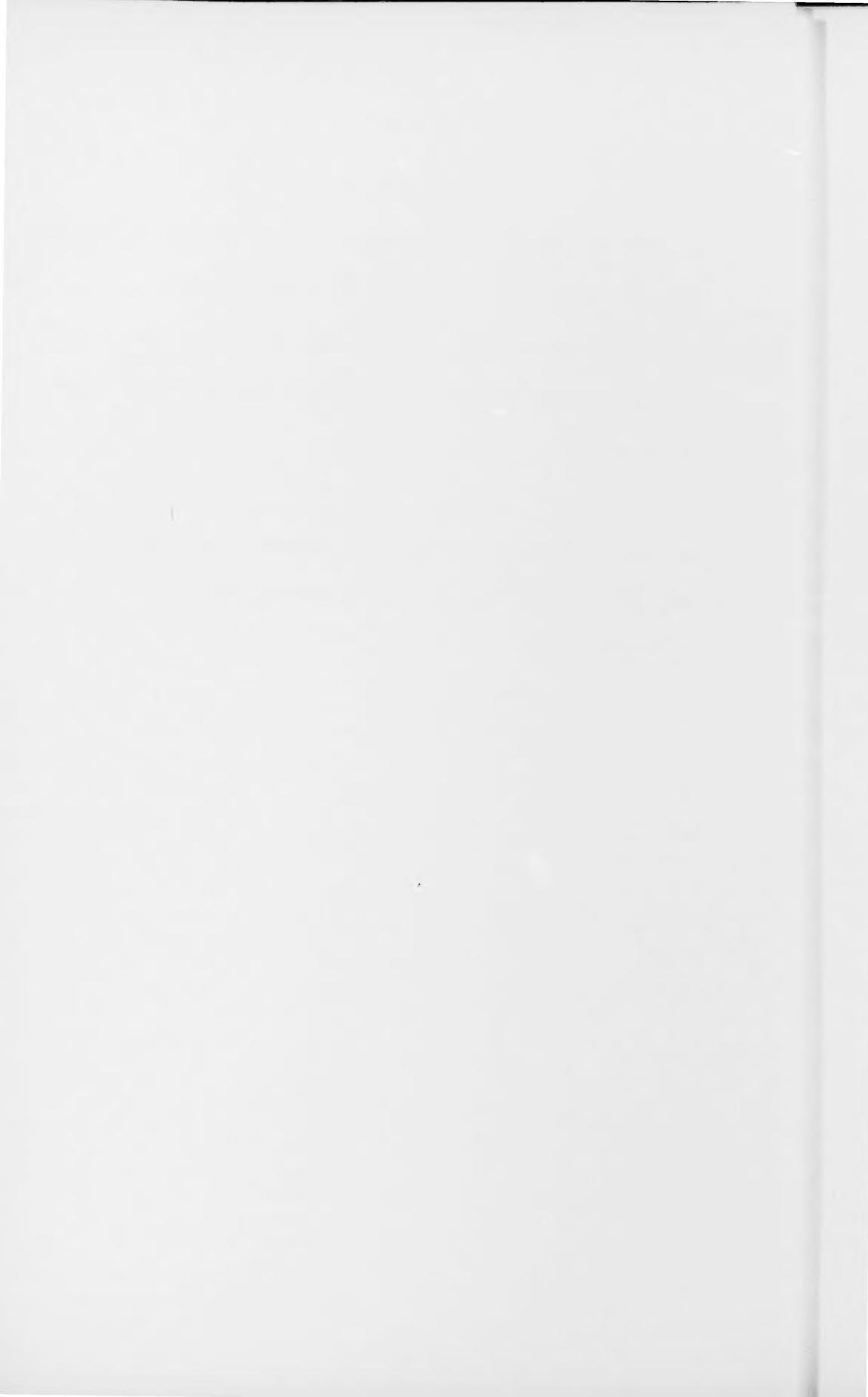
(714) 623-2640

10/11/87



QUESTIONS PRESENTED

1. Did Rochelle Stanton have the authority to represent EUNICE RUSSELL and WILLIE JEAN RUSSELL in the Unlawful Detainer without their knowledge or authority without a Substitution of Attorneys filed with the Clerk of the Court?
2. Did the Court exceed its jurisdiction to proceed with the trial in the absence of the defendants without proof of Notice of Trial?



COURT OF APPEAL OF CALIFORNIA
SECOND APPELLATE DISTRICT

EUNICE RUSSELL,)	
)	
Petitioner,)	
)	
v.	)	CASE NO. _____
)	
SUPERIOR COURT OF)	
THE COUNTY OF LOS)	
ANGELES)	
)	
(ROBERT H. FRASER,)	
REAL PARTY IN)	
INTEREST)	
)	
Respondent))	
_____)	

PETITION FOR WRIT OF CERTIORARI TO COURT OF
APPEAL OF CALIFORNIA
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The Petitioners Eunice Russell and Willie Jean Russell

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and
WILLIE JEAN RUSSELL
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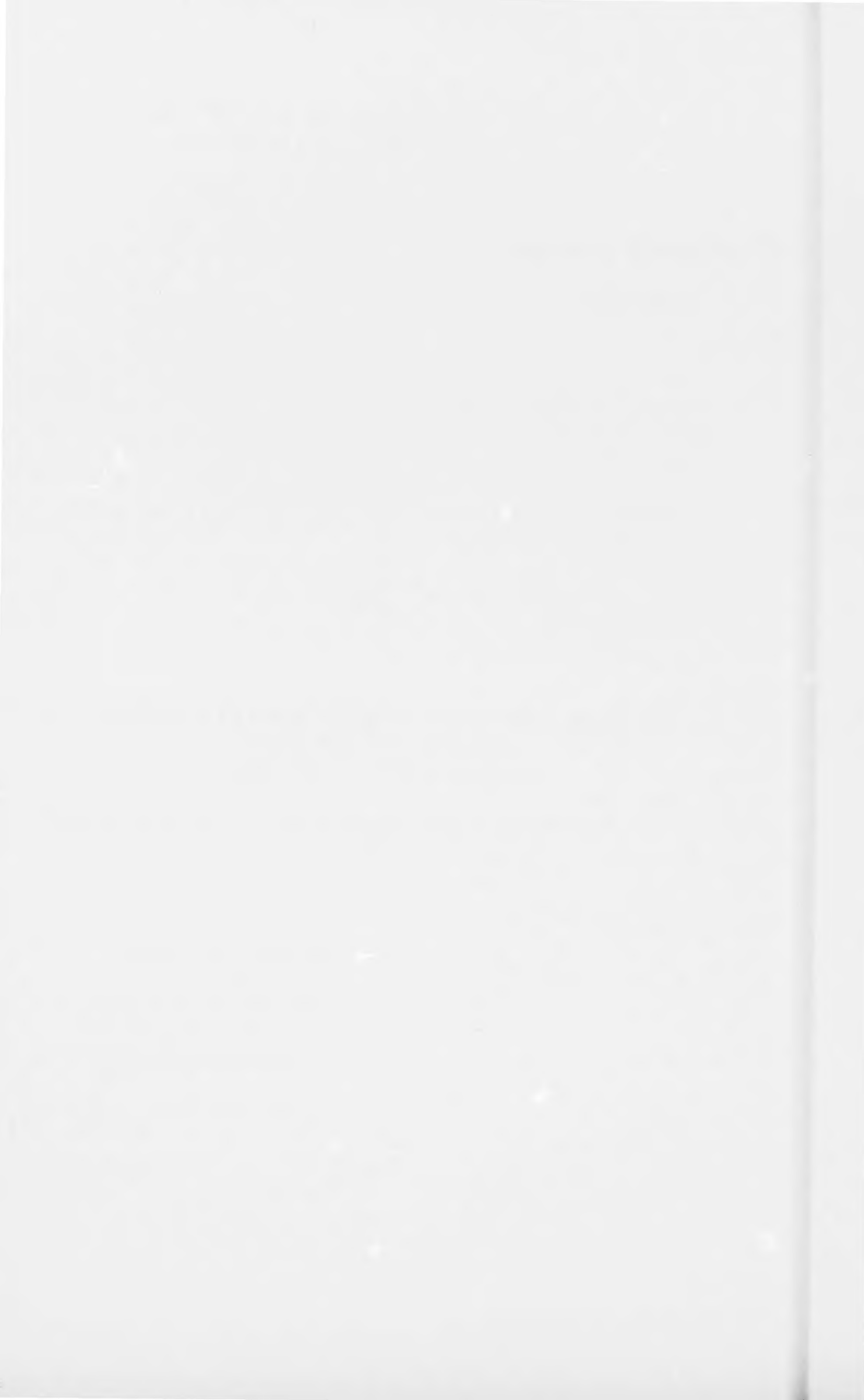


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Pages 1,2



No. _____

ROBERT H. FRASER,
RESPONDENT

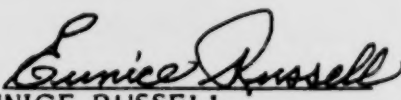
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) NO. _____
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2. The Supreme Court of the State of California entered its Order denying Petitioner's petition for review on October 15, 1986. A copy of the Order denying Petitioner's petition is attached as Appendix A.

NOTICE IS HEREBY GIVEN that Eunice Russell, the defendant and appellant herein, hereby appeals to the Supreme Court of the United States from the final judgment of this Court entered on March 14, 1986, a hearing on which was denied by the California Supreme Court on October 15, 1986.

This Writ of Certiorari is taken pursuant to Section 1 [1257(3)] of Title 28 of the United States Code.

Dated: January 23, 1987


EUNICE RUSSELL
Attorney: Propria Persona
Defendant and Appellant



COURT OF APPEAL OF CALIFORNIA
SECOND APPELLATE DISTRICT

)	
)	
EUNICE RUSSELL,)	
)	
Defendant and Appellant,)	
)	
v.	)	CASE NO. _____
)	
ROBERT H. FRASER,)	
)	
Plaintiff and Respondent.)	
_____)	

NOTICE OF APPEAL TO THE COURT OF APPEAL OF
CALIFORNIA, SECOND APPELLATE DISTRICT

NOTICE IS HEREBY GIVEN that EUNICE RUSSELL, the defendant and appellant, hereby appeals to the Supreme Court Court of the United States from the final judgment of this Court entered on October 15, 1986, a hearing on which was denied by the California Supreme Court on October 15, 1986.



This appeal is taken pursuant to Title 28 and Section USCS 1257(3) By Writ of Certiorari, when the validity of a treaty or statute of the United States is drawn in question or where the validity of a State statute is drawn in question on the grounds of its being repugnant to the Constitution, treaties or laws of the United States, or where any title, right, privilege or immunity is especially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under, the United States. (See Appendix A.)

JURISDICTION

On August 21, 1986, the Court of Appeals entered its Order denying Petitioner's petition for writ of mandate or other extraordinary relief, and a copy of the Order denying Petitioner's petition is attached as Appendix B.

OPINION BELOW

The Supreme Court of the State of California denied the petitioner's petition for review on October 15, 1986, the opinion of the Appellate Department of the Superior Court, State of California on March 19, 1986, is printed in Appendix C. The jurisdiction of this Court is invoked



under Title 28, United States Code, Section 1257(3),
inasmuch as Petitioner is seeking review of an Order issued
by the Supreme Court of the State of California. (See
Appendix C.)

CONSTITUTIONAL PROVISION INVOLVED

United States Constitution Amendment Article XIV.,
Section

I.

Nor shall any person. . . be deprived of life,
liberty, or property, without due process of
law, nor deny to any person within its
jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

1. On November 19, 1983, plaintiff (Robert H. Fraser)
filed an unlawful detainer complaint against the defendants,
Eunice Russell and Willie Jean Russell for the sum of
\$4,173.00. The complaint was fraudulent, due to the fact
that the rent was deducted from Eunice Russell's salary
monthly by Crocker National Bank, and placed in trust for
Robert H. Fraser (Respondent), who refused to accept, or



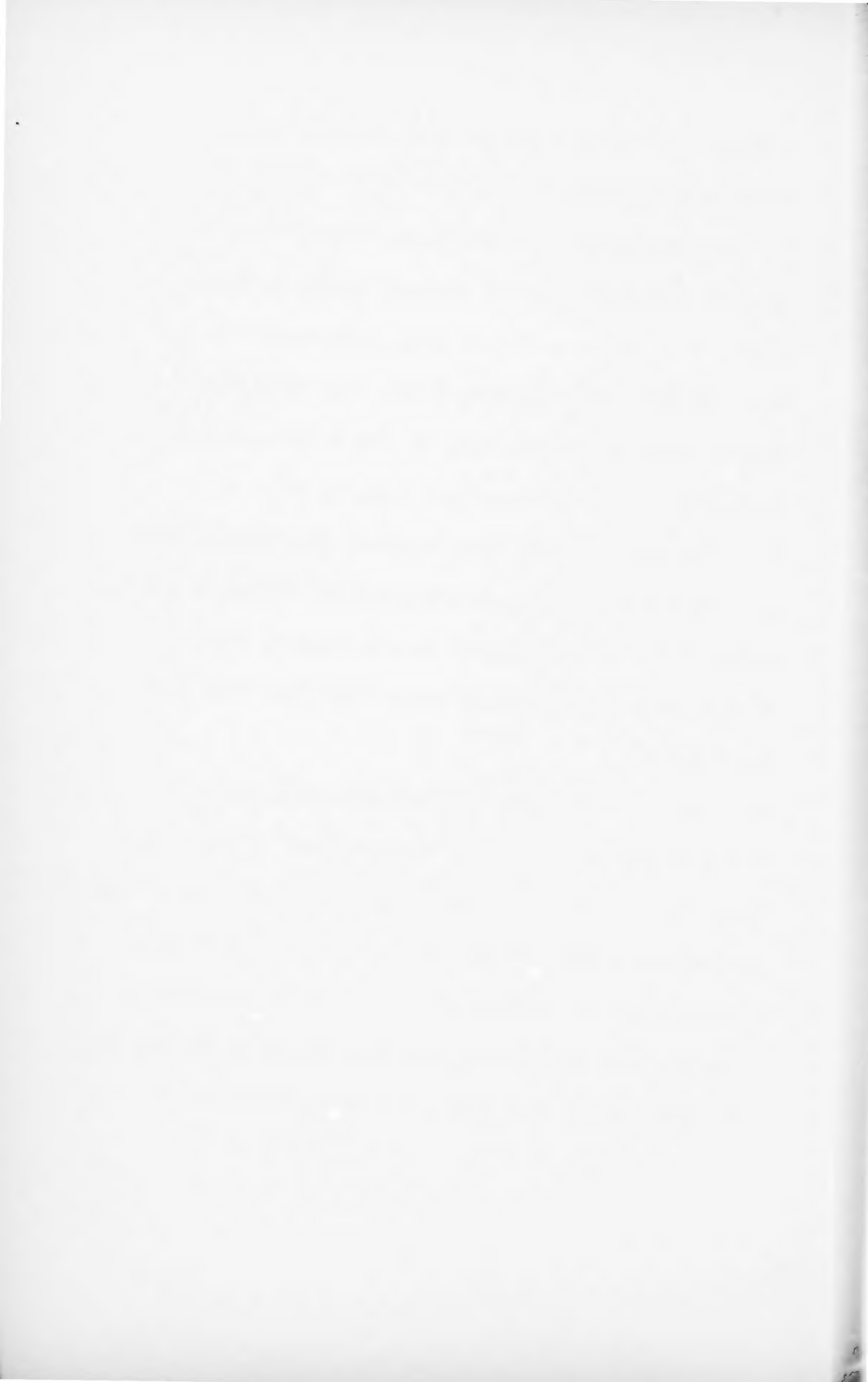
withdraw the money from the account which was in his name. (See Appendix D¹ & D².)

2. On November 28, 1983, Eunice Russell filed a Specific Denial of Unlawful Detainer, and a Notice of Motion to Strike Unlawful Detainer Complaint.

3. On December 12, 1983, Eunice and Willie Jean Russell retained attorney Max Abrams in place of Eunice Russell in propria persona. (See Appendix D³.)

4. On December 13, 1983, Attorney Max Abrams filed substitution of attorneys in place of Eunice Russell, and on behalf of Willie Jean Russell, he also filed an Amended Answer to Complaint, and a Demand for Jury Trial. (See Appendix D³a.)

5. Also, on December 13, 1983, the defendants' Demurrer and Motion to Strike was denied. Attorney Gary Torpy for the plaintiff promised the Appellant if he and his wife moved before February 01, 1984, Robert H. Fraser would assume all indebtedness and withdraw the unlawful detainer. The Appellant and his wife moved on January 28, 1984, and the key was returned on January 30, 1984.



6. On December 13, 1983, the Appellant was advised by his attorney of record (Max Abrams) to voluntarily restore possession to the plaintiff prior to the commencement of trial, so that the litigation would then become a civil action without entitlement to priority in trial setting rather than remain a special proceeding, since possession would no longer be an issue. (See Appendix D⁴ & D⁵.)

7. On or about December 15, 1983, the Appellant was contacted for the second time by a para-professional organization answering unlawful detainers for tenants and providing services. This group was at that time prior associates of Rochelle Stanton, and they had all worked together. They requested that Appellant get rid of his attorney, Max Abrams, and retain Rochelle Stanton, because she was smart and a go-getter.

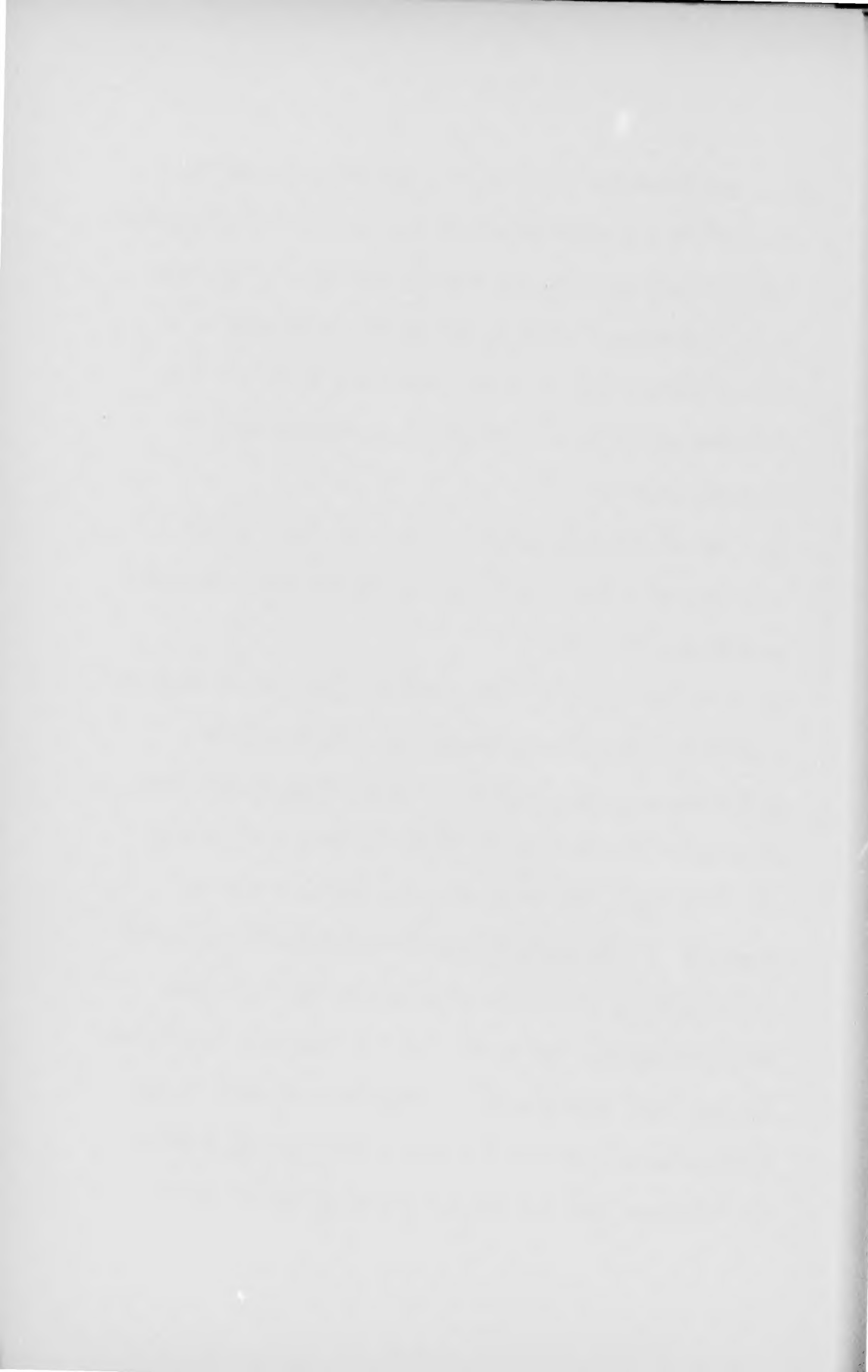
8. On December 16, 1983, Appellant retained Rochelle Stanton in the matter of Russell V. Fraser, Case No. 412, 734, a Complaint for Damages Compensatory and Punitive for Wrongful Termination of Utilities; Malicious Prosecution and Intention and Intentional Infliction of Emotional Distress.

9. On December 16, 1984, she refused to accept the U.D. nor did she agree to accept the case, or represent the Appellant and his wife, nor did the petitioner or his wife sign a Substitution of Attorneys for Rochelle Stanton to replace the attorney of record Max Abrams, or file with the Clerk of the Court a Substitution of Attorneys for Rochelle Stanton.

10. On or about January 05, 1984, the Clerk of the Court mailed a Notice of Trial for the Appellant to appear on February 01, 1984.

11. On February 01, 1984, Rochelle appeared in court as counsel for defendants without their knowledge, or authorization, and continued the case to March 07, 1984, and waived Notice of Trial. (See Appendices D⁶ & D⁷.)

12. On March 07, 1984, attorney Rochelle Stanton appeared in Court as attorney of record, and advised the Court that she was prepared to proceed but her client failed to appear. She moved for a continuance, which was denied. (See Appendix D⁸.) Thereafter, she asked to be relieved as counsel and the motion was granted, without any evidence that she was authorized to appear for the



defendants. Judgment was entered for the plaintiff in the amount of sixteen thousand, four hundred and sixty-three and 95/100 (\$16, 463.95) dollars. On March 7, 1986 Gary Torpy appearing for the plaintiff, Robert H. Fraser, the plaintiff was sworn as the only witness. No exhibit of any kind was received in evidence by judicial notice or otherwise. Nor was there any proof given at the trial that the defendants had been given 5 days' notice of trial, and the trial was held without the defendants, or in the presence of counsel for the defendants. (See Appendices D⁹ & D¹⁰.)

13. On or about June 14, 1984, the Law Firm of Goodman and Hecht substituted as attorney of record in place of Gary Torpy.

14. On June 20, 1984, Goodman and Hecht filed an erroneous document of Satisfaction of Judgment as to Possession of the Premises on March 07, 1984.

15. On or about March 19, 1984, the Appellant paid attorney Robert E. Johnson one thousand (\$1,000) dollars as retainer fees to move to set aside and vacate judgment and enter another and different judgment, he abandoned the



case on July 13, 1984, without performing any legal services.

16. On or about July 27, 1984 the Appellant retained attorney Joe C. Hopkins to move to set aside and vacate judgment and enter another and different judgment and filed a Supplement to the Notice of Motion.

17. On August 27, 1984, the Notice of Intention to Move to Set Aside and Vacate Judgment and Enter Another and Different Judgment was denied, and Motion for Order Assignment Right to Payment against Willie Jean Russell was granted.

18. On August 27, 1984, attorney Howard Goodman introduced a fraudulent declaration of attorney Rochelle Stanton, in support of his motion. Also, attorney for the petitioner introduced a false document prepared by defendant's attorney Joe C. Hopkins, in the form of a declaration signed by the defendant, of which he had know was false. On August 29, 1984, Joe C. Hopkins abandoned the case. (See Appendices D¹¹ & D¹² and D¹³ & D¹⁴.)



19. On November 14, 1984, defendant's Motion to Correct Error in Calculation of Judgment was granted, and reduced to \$7,228.00.
20. On January 02, 1985, defendant's Notice of Motion for Order Vacation Judgment for Lack of Jurisdiction was denied: "No grounds for relief exist, and lack of diligence, 8 months."
21. On January 14, 1986, Eunice Russell and Willie Jean Russell appealed to the Superior Court of the Appellate Department of the Court from an Order denying their motion to vacate the judgment.
22. On March 19, 1986, the Court of Appeals affirmed the decision of the Lower Court. (See Appendix C.)
23. On April 29, 1986, Petition for Rehearing denied.
24. On July 08, 1986, Petition for Writ of Mandate or other extraordinary relief (filed June 23, 1986), was denied.
25. On August 21, 1986, Petition for Writ of Mandate or other extraordinary relief (filed August 18, 1986), was denied.



26. On October 15, 1986, the Petitioner's petition to the Supreme Court (After Judgment By The Court Of Appeal) was denied for review.

27. The Appellate Department Of The Superior Court overlooked, misapplied, and failed to consider the statute, decision, and principle directly controlling the California Code of Civil Procedure, Section 284: "provides that the attorney in an action or special proceeding may be changed at any time before or after judgment or final determination, as follows:

1. Upon the consent of both client and attorney, filed with the clerk, or entered upon the minutes;
2. Upon the order of the court, upon the application of either client or attorney, after notice from one to the other.

28. The Court abused its discretion by refusing to vacate the judgment for the unauthorized appearance of attorney Rochelle Stanton as attorney of record for Eunice Russell and Willie Jean Russell without their knowledge, or

authorization in place of their attorney of record Max Abrams, and without a Substitution of attorney.

29. Also, the Court failed to consider the Civil Code of Procedure, Section 594, in the matter of the unlawful detainer that a party be given 5 days notice of such trial.

REASON FOR GRANTING THE WRIT

30. The denial of Petitioner's petition for Writ of Mandate or other extraordinary relief by the Court Of Appeal Of The State of California, and Affirmed by the California Supreme Court-denied Petitioner under the United States Constitution Amendment-Article XIV, Section I: "due process of law. . . and equal protection of the laws."

31. When a State statute is interpreted and enforced by a State official so that it becomes discriminatory, and violative of the constitutional rights, both State and Federal, of a citizen . . . and that interpretation and enforcement of that statute is sustained by the highest court of last resort in that State, then such statute is unconstitutional, and the Federal constitutional rights . . .



are infringed, entitling him to relief from this court. Cf.

Snowden v. Hughes, 321 US 1, 88 L ed 497, 64 S Ct 397.

THE APPELLATE DEPARTMENT OF THE SUPERIOR
COURT STATE OF CALIFORNIA, COUNTY OF LOS
ANGELES, EXCEEDED ITS JURISDICTION BY FAILING TO
COMPLY WITH THE CODE OF CIVIL PROCEDURE,
SECTION 284..

On January 06, 1984, plaintiff's attorney Gary B. Torpy
mailed the Notice of Trial to Rochelle Stanton, knowingly,
that Max Abrams was the attorney of record, because he
had discussed the case with Max Abrams on or about
December 27, 1983, the trial was set for February 01, 1984.

32. No Notice of Trial was received by the attorney of
record Max Abrams from the Clerk of the Court, or from
attorney Gary B. Torpy.

33. Attorney Max Abrams advised the defendants to
voluntarily restore possession to the plaintiff prior to the
commencement of trial, so that the litigation would then
become a civil action without entitlement to priority in
trial setting rather than remain a special proceeding since
possession would no longer be an issue.

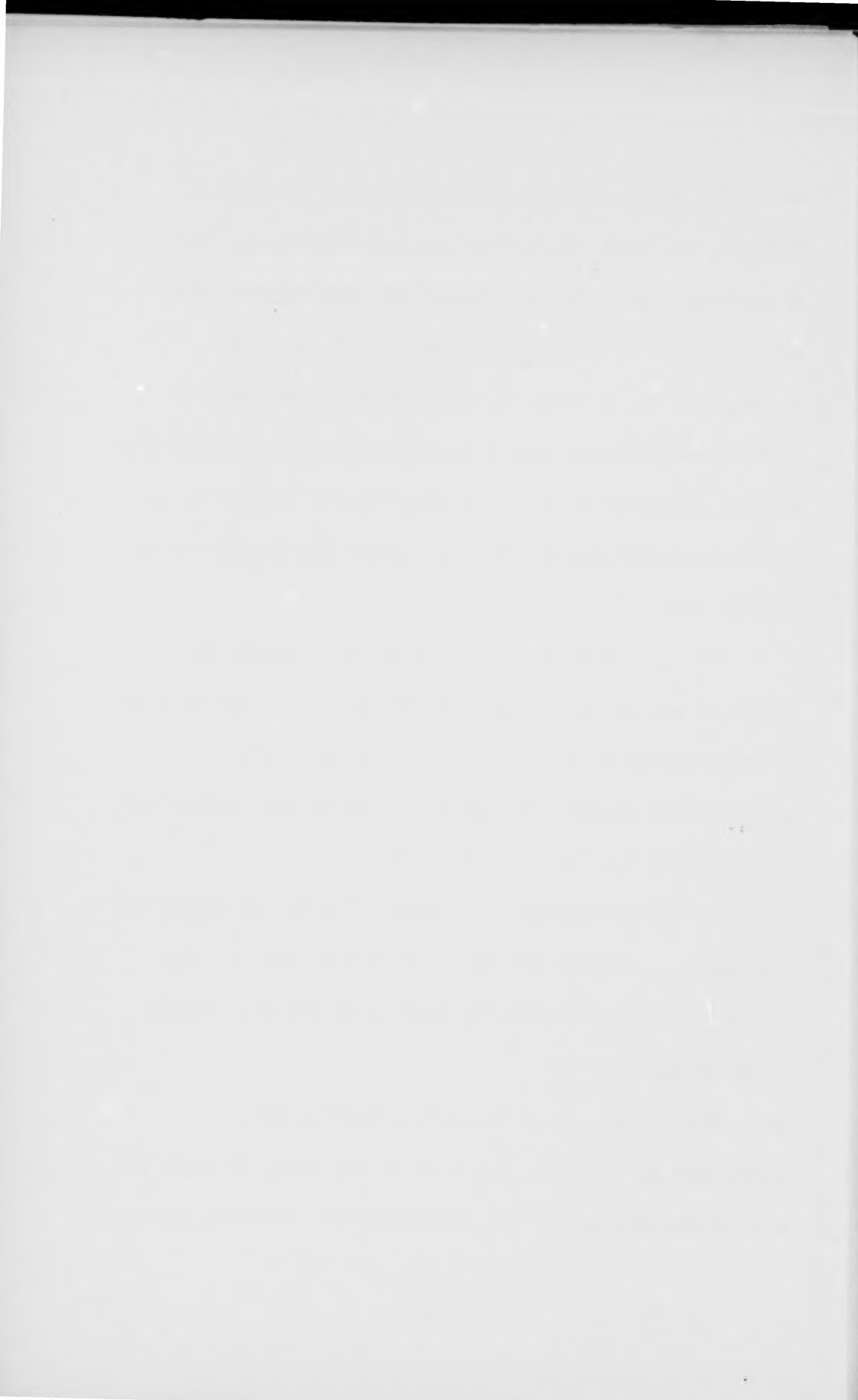


34. The appearance of Rochelle Stanton in Court on February 01, 1984, as the representative of Eunice and Willie Jean Russell in an unlawful detainer without the knowledge, or authorization of the defendants was a violation of the Business and Professions Code, Section 6104: "unauthorized, appearance, corruptly or willfully and without authority appearing as attorney for a party to an action or proceeding constitutes a cause for disbarment or suspension."

35. The fact that Rochelle Stanton may possess the necessary authority to represent the defendants in one case is not evidence of her authority to represent the defendants in another and distinct proceedings. *Sullivan v. Dunne* (1926) 198 Cal. 183, 244 p. 343.

THE COURT IS WITHOUT JURISDICTION TO PROCEED IF PROOF OF NOTICE OF TRIAL IS NOT GIVEN AT THE TRIAL WHEN THE ADVERSE PARTY IS ABSENT FROM THE TRIAL.

36. The Code of Civil Procedure, Section 594, Subdivision (a) provides that a party may bring an issue to trial in the absence of the adverse party. "However, if the



issue to be tried is an issue of fact, proof shall first be made to the satisfaction of the court that the adverse party has had 15 days' (5 days notice for unlawful detainer) notice of such trial..."

37. The defendants acknowledge the fact they received the first Notice Of Trial from the Clerk of the Court mailed on January 05, 1984. On March 07, 1984, the defendants were not served with the second Notice of Trial, therefore, they had no knowledge of the trial date until March 06, 1986, when Rochelle Stanton requested that Eunice Russell appear in court the following day.

38. Eunice explained to Ms. Stanton that he could not take off from work in such short notice, and too, he had moved according to the agreement with the attorney for the plaintiff, and it was no longer an unlawful detainer case.

39. Rochelle Stanton appeared in court and claimed that her "client states (he) cannot be available today--not prepared. Has other business 'more pressing.'" She then informed the court that she was ready to proceed even if defendant failed to appear. She then moved for a



continuance. She next moved to be relieved as attorney of record. That motion was granted.

40. The minutes reveal that no appearance was made by defendants. Plaintiff testified in his own behalf without the presence of counsel for the defendants, or the defendants themselves, and without any exhibit of any kind received in evidence, by judicial notice or otherwise that the defendants had received notice of trial, or Rochelle Stanton was the attorney of record.

41. The controlling legal principles are plain. The command of the Fourteenth Amendment is that no "State" shall deny to any person within its jurisdiction the equal protection of the law. "A State acts by its legislative, its executive, or its judicial authorities. It can act in no other way. The constitutional provision, therefore, must mean that no agency of the State, or of the officers or agents by whom its powers are exerted, shall deny to any person within its jurisdiction the equal protection of the laws. Whoever, by virtue of public position under a State government, * * * denies or takes away the equal protection of the laws, violates the constitutional

inhibition; and as he acts in the name and for the State, and is clothed with the State and he acts in the name and for the State, and is clothed with the State, and is clothed with the State's power, his act is that of the State. This must be so, or the constitutional prohibition has no meaning." 100 U.S. 339, 347, 25 L. Ed. 676. Thus the prohibitions of the Fourteenth Amendment extend to all action of the State denying equal protection of the laws; whatever the agency of the State taking the action, (1958) Cooper v. Aaron 358 U. S. 18, 78 S. Ct. 1401.

CONCLUSION

42. For the foregoing reasons, petitioner Eunice Russell respectfully requests that a Writ of Certiorari issue to review the judgment of the Supreme Court of the State of California.



Name, Address and Telephone
Number of Attorney(s)
EUNICE RUSSELL
1160 Val Vista Street
Pomona, California 91768
(714) 623-2640
ATTORNEY(S) In Propria Persona

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1986

EUNICE RUSSELL,	CAST NUMBER
Petitioner,	CV
vs	
ROBERT H. FRASER,	PROOF OF SERVICE/ ACKNOWLEDGEMENT OF SERVICE
Respondent	

I, the undersigned, certify and declare that I am over the age of 18 years, in the County of **LOS ANGELES**, State of California, and not a party to the above-entitled cause. On **DECEMBER 15, 1986**. I served a true copy of **WRIT OF CERTIORARI ()** by personally delivering it to the person(s) indicated below in the manner as provide in FRCivP 5(b), (xx) depositing it in the United States Mail in a sealed envelope with the postage thereon fully prepaid to the following: (list names and addresses for person(s) served. Attach sheets if necessary.)

GOODMAN & HECHT
Attorney at Law
18321 Ventura Boulevard
Suite 1055
Tarzana, CA 91356-4228

JUANITA VERNON, Judge
110 North Grand Avenue
Division 7
Los Angeles, California 90010

Place of Mailing: LOS ANGELES, CALIFORNIA

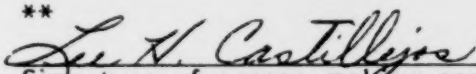
Executed on DECEMBER 15, 1986 at LOS ANGELES,
California. (OVER)

PLEASE CHECK EITHER OF THESE BOXES

** () I hereby certify that I am a member of the Bar
of the United States District Court, Central
District of California.*

** () I hereby certify that I am employed in the
office of a member of the Bar of this Court at
whose direction the service was made.*

** (X) I hereby certify under the penalty of perjury
that the foregoing is true and correct.

**

Signature of person making service

ACKNOWLEDGE OF SERVICE



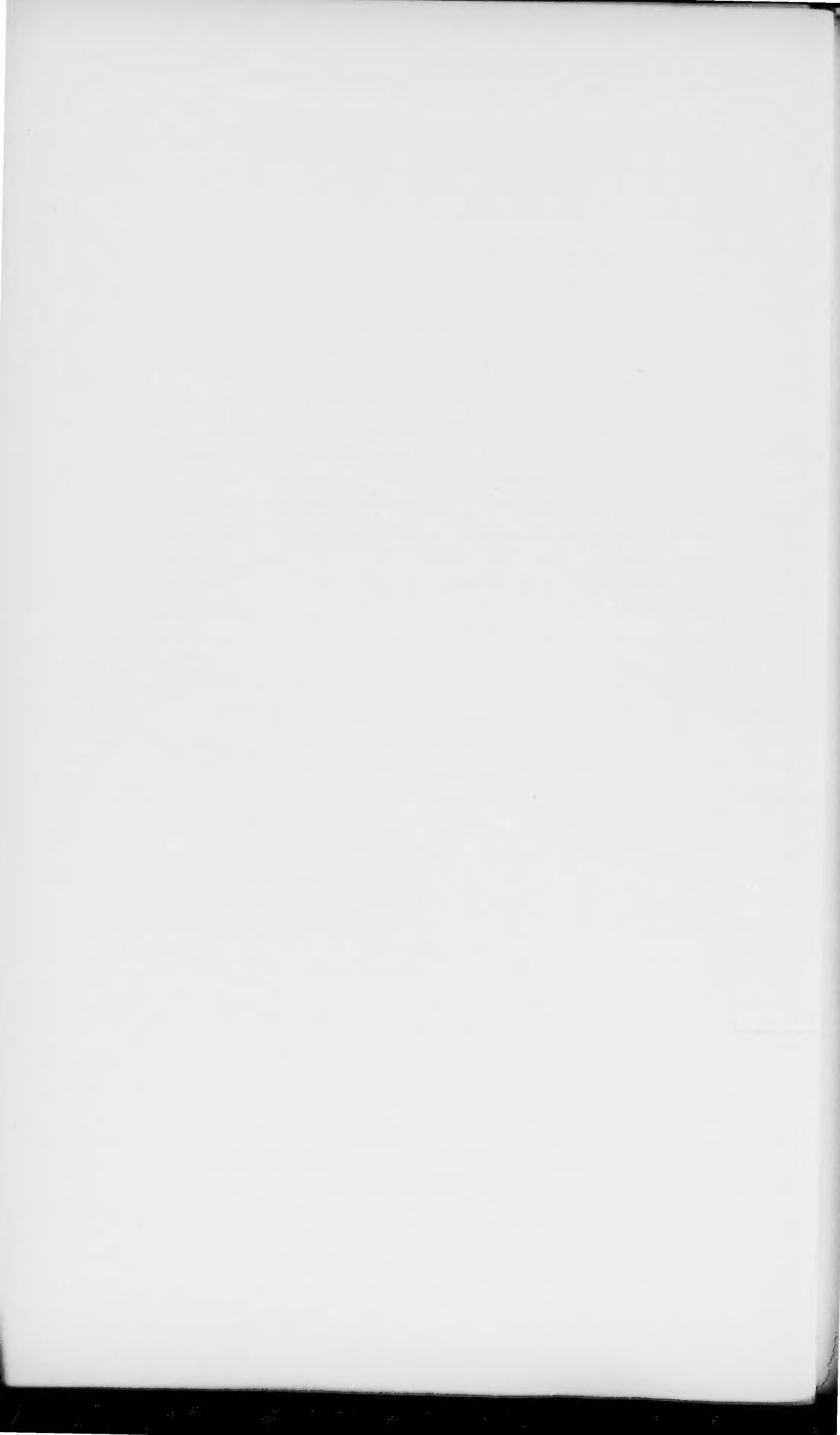
I, _____, Received a true copy of the
within document on _____, 19__.

(Signature)
for: _____
(Party Served)

Civ 40 (7/78)



APPENDIX A



ORDER DENYING REVIEW

AFTER JUDGMENT BY THE COURT OF APPEAL

2nd District, Division 1, No. B022452

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA
IN BANK

RUSSELL et al., Petitioners,

v.

SUPERIOR COURT OF THE COUNTY OF LOS ANGELES,
Respondent;
FRASER, Real Party in Interest

Petitioners' petition for review DENIED.

/stamped/
SUPREME COURT
F I L E D
OCT 15 1986
Laurence P. Gill, Clerk

Deputy

BIRD

Chief Justice

APPENDIX A

APPENDIX B



IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION ONE

EUNICE RUSSELL, et al.,	)	B022452
	)	(Super. Ct. No. A 16739)
Petitioners,	)	(Muni. Ct. of the Los
	)	Angeles Jud. Dist. No A
	)	61636)
vs)	
	)	<u>ORDER</u>
THE SUPERIOR COURT OF)	
THE STATE OF CALIFORNIA)	
FOR THE COUNTY OF LOS)	
ANGELES)	
)	
Respondent,)	
)	
ROBERT H. FRASER,)	
)	
Real Party in Interest.)	
)	

THE COURT:

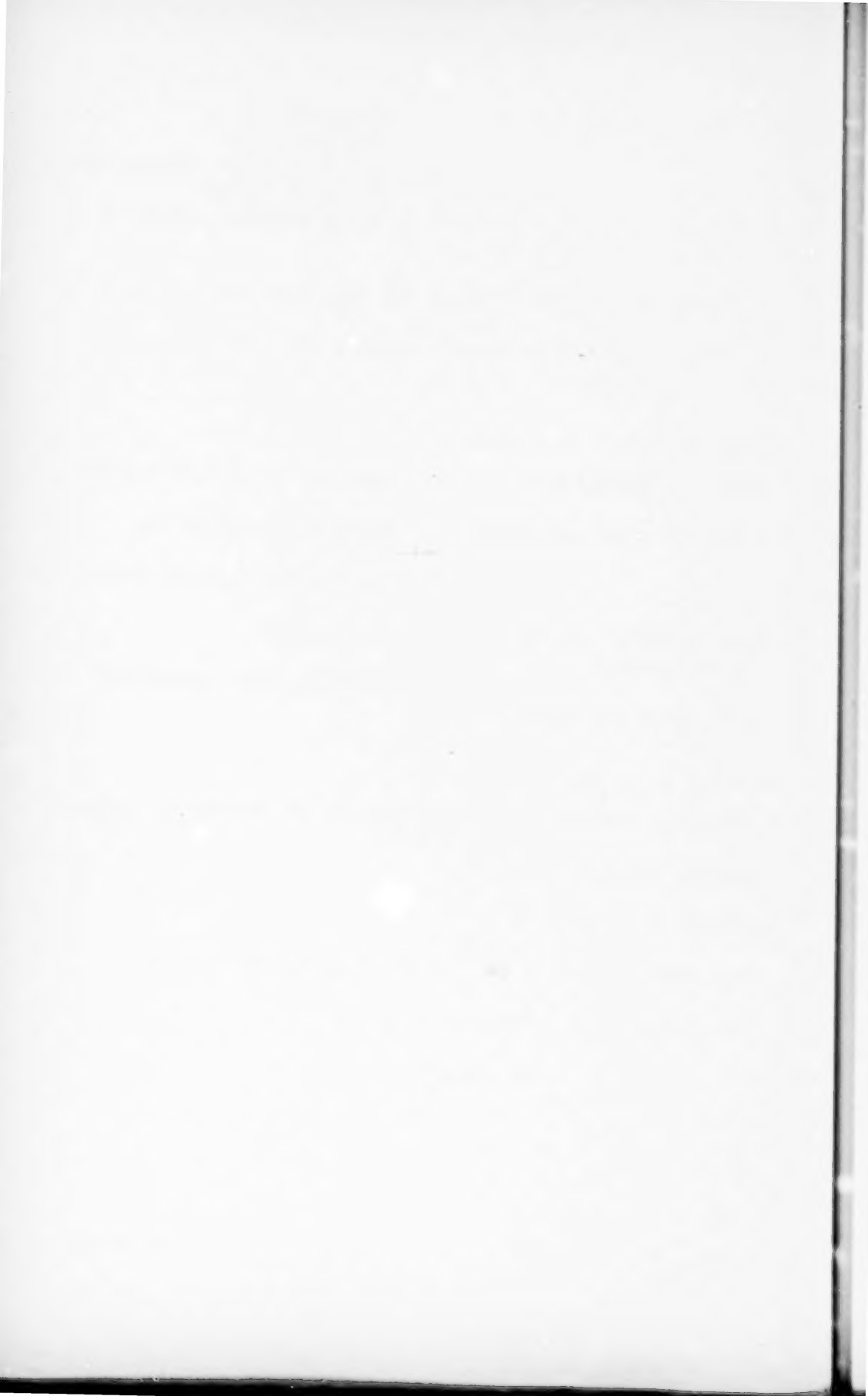
The petition for writ of mandate or other extraordinary relief, filed August 18, 1987, has been read and considered.

The petition is denied.

APPENDIX C



A. B. HARDEY, DEPUTY



Defendant Eunice Russell appeals from an order denying his motion to vacate the judgment.¹ The record, which consists of the clerk's transcript, reflecters the following chronology of events:

On November 18, 1983, plaintiff Robert H. Fraser filed a complaint in an unlawful detainer based on nonpayment of rent against defendant and Willie Jean Russell. Defendant and Willie filed a joint answer on November 28, 1983. Also on that date they filed a motion to strike. On December 13, 1983, the court construed the motion to strike as also constituting a demurrer and, following a hearing, the court denied the motion to strike and overrruled the demurrer. Later that date plaintiff filed a first amended complaint, and a joint amended answer was filed by defendant and Willie.

¹ No timely notice of appeal was filed by defendant Willie Jean Russell. We therefore dismiss that defendant's purported appeal. The notice of appeal filed by defendant Eunice Russell purports to be from the judgment. However, we deem the appeal to be taken from the subsequent order denying defendants' motion to vacate the judgment, which is clearly what defendants intended.



Also, on December 13, defendants substituted Max Abrams as their attorney of record in place of themselves, and their attorney filed a demand for jury trial.

On January 6, 1984, plaintiff mailed notice of trial, which was set for February 1, 1984, at 8:30 a.m., to Rochelle D. Stanton, who was addressed in the notice as the attorney of record for defendant and Willie. Notice of trial at that time and date was also mailed to defendant and Willie at their residence by the clerk of the court on January 5, 1984.

The court's minutes reflected that on February 1, 1984, trial was continued to March 7, 1984, and notice was waived by both plaintiff and defendant. The minutes further reflect that on March 7, Rochelle Stanton appeared and represented that her "client states [he] cannot be available today--not prepared. Has other business 'more pressing.'" She then informed the court that she was ready to proceed even if defendant failed to appear. She then moved for a continuance. The court denied the motion for a continuance. She next moved to be relieved as attorney of record. That motion was granted.



With regard to the trial itself, the minutes reveal that no appearance was made by defendant. Plaintiff testified in his own behalf. After consideration of the evidence, the court declared the lease forfeited and awarded plaintiff damages and attorney's fees.

On August 1, 1984, defendant's then attorney, Joe C. Hopkins, filed a motion to vacate the judgment and to enter a different judgment. The motion was originally scheduled for hearing on August 13, 1984, but was placed off calendar due to the lack of appearance by any party. On August 27, 1984, however, a hearing was held on the motion. Testimony was taken. Following the hearing, the motion was denied.

On October 16, 1984, Max Abrams, apparently again retained as defendant's attorney of record, appeared on defendant's motion to correct the judgment made on the ground of fraud of clerical error. Hearing on that motion was continued to November 14, 1984.

The minutes of November 13, 1984, reflect that the motion was granted and that the "[j]udgment shall be corrected Nunc Pro Tunc to read principal sum of \$6,733.00



representing 4,173.00 rent \$2,560.00 damages calculated on
bais [sic] of \$20 a day for 128 days between 10-31-83 and
3-7-84. Attorneys fees of \$495.00 and costs."

On November 29, 1984, Max Abrams filed a motion to
vacate the judgment for lack of jurisdiction. It was made
on the ground that there was no evidence that plaintiff
presented proof at trial that defendants had been given
notice of trial as required under Code of Civil Procedure
section 594.

In opposition plaintiff argued that the motion was an
improper motion for reconsideration in violation of the
provisions of Code of Civil Procedure section 1008, that
the issue of notice was "Res Judicata" [sic], that defendant
knew of the trial but voluntarily refused to appear, and
that defendant consented to the court's jurisdiction by
making his previous motion to correct the judgment.

Following a hearing on January 2, 1985, the court
denied the motion on two grounds, i.e., no grounds for
relief existed and lack of diligence (lapse of 8 months).

On appeal defendant asserts that the court erred in
denying that motion for two reasons. Defendant again

relies on the ground given in the motion, i.e., the court lacked jurisdiction, because there was no evidence that defendant argues that Rochelle Stanton was not authorized to appear on behalf of defendants since there was no substitution of attorneys or other proof authorizing her to appear on defendant's behalf, and thus, notice was not waived.

We find no merit to defendant's position and affirm. Initially, we point out that we have no quarrel with defendant's recitation of law concerning the court's lack of jurisdiction in the absence of competent evidence that a defendant who failed to appear for trial had timely notice of trial. (Code of Civ. Proc. § 594; Irvine Nat'l Bank v. Han (1982) 130 Cal.App.3d 693.)

Defendant's reliance on the Irvine Nat'l Bank case, however, is misplaced. In that case the court found that '[t]here was absolutely no competent evidence 'introduced into evidence' at the trial to show that defendant had been served with notice of trial. Although the notice of trial and the attached proof of service were apparently in the superior court file at the time of the trial, those documents



were not introduced into evidence as required by section 594, subdivision (b) which also provides that 'the provisions of this subdivision are exclusive.' There was no testimony that the required notice was given, nor is there any suggestion in the judgment that the court even considered the matter." (Id., at pp. 397-698; fn. omit.)

In reaching the foregoing conclusion the Irvine Nat'l Bank court had before it a record of the oral trial proceedings and the judgment, which was "silent as to whether the issue of notice of trial had been considered by the court." (Irvine Nat'l Bank, supra, at pp. 695-696, fn. 3.)

The present case is factually distinguishable. The minutes of the trial on March 7, 1984, expressly reflect that prior to commencement of trial "proof [had] first been made to the satisfaction of the court that . . . defendant has had five/fifteen days notice of such trial . . . " It is therefore clear that not only did the court also made an express finding that defendant had been given proper notice of trial.



Although the minutes do not reflect that the notices of trial filed with the court were introduced into evidence, subdivision (b) of section 594 provides in the alternative;: "[i]f notice is served by a party, proof may be made by introduction into evidence of an affidavit or certificate pursuant to subdivisions (1) or (2) of Section 1013a or other competent evidence." (Italics added.)

Defendant here has failed to provide us with a record of the oral proceedings attendant to the court's above express finding. It is his burden, as appellant, to produce a record adequate to address his contentions. (Weiss v. Brentwood Sav. & Loan Assn. (1970) 4 Cal.App.3d 738, 746.) In the absence of such a record, we must presume that the court had before it competent evidence of such notice and that the trial court's order denying the motion is correct since "[a]ll intendments and presumptions are indulged to support it on matters as to which the record is silent, and error must be affirmatively shown." (Denham v. Superior Court (1970) 2 Cal.3d 557, 564.)



This disposition makes it unnecessary to address
defendant's remaining argument.

This order is affirmed.

/s/Cupperman
Presiding Judge

We concur.

/s/ Reese
Judge

/s/ Swen
Judge



APPENDIX D

ORIGINAL FILED
Nov 18, 1983
MUNICIPAL CLERK

ATTORNEY OR PARTY WITHOUT ATTORNEY
GARY B. TORPY, ESQ.
STONE & TORPY, A Professional Corporation
11440 San Vicente Boulevard, Suite 100
Los Angeles, CA 90049
Attorney for: PLAINTIFF

MUNICIPAL COURT OF THE LOS ANGELES JUDICIAL
DISTRICT
COUNTY OF LOS ANGELES, STATE OF CALIFORNIA
110 N. Grand Avenue, Los Angeles, CA 90012

PLAINTIFF: ROBERT H. FRASER

DEFENDANT: EUNICE RUSSELL; WILLIE JEAN RUSSELL;
& DOES 1 through 5, Inclusive. DOES 1 TO 5.

COMPLAINT - Unlawful Detainer Case Number A61036

1. This pleading including attachments and exhibits
consists of the following number of pages 21
2. a. Plaintiff is (x) an individual over the age of 18
years.

☐ a public agency
☐ a partnership
☐ a corporation
☐ other (specify)

b. ☐ Plaintiff has complied with the fictitious
business name laws and is doing business under the



fictitious name of (specify):

3. Defendants named above are in possession of the premises located at (street address, city and county)

2023 S. Corning Street, Apt. 8, Los Angeles, CA

4. Plaintiff's interest in the premises is (x) as owner
() other.
5. The true names and capacities of defendants sued as Does are unknown to plaintiff.

6. a. On or about (date): December 15, 1979

Defendants (names):

Eunice Russell and Willie Jean Russell

agreed to rent the premises for a (x) Mo-to-Mo
() other.

due on the (x) first of the month () other day

- b. This (x) written () oral agreement was made with plaintiff (x) plaintiff's predecessor in interest.
() plaintiff's agent () other

- c. The defendants not named in item 6.a. are subtenants () assignees () other

- d. The agreement was later changed as follows (specify):

Pursuant to the Los Angeles Rent Control ordinance the rent was increased first to \$325 per month as of 12/1/81 to \$347.75 per month.

- e. (x) A copy of the written agreement is attached and labeled Exhibit A.
7. Plaintiff has performed all conditions of the rental agreement.
8. (x) a. The following notice was served on defendant (name): Eunice Russell and Willie Jean Russell.
- (x) 3-day notice to pay rent or quit
- () 3-day notice to perform covenant or quit
- () 3-day notice to quit
- () 30-day notice to quit
- () Other (specify):
- b. The period state in the notice expired on (date):
- October 24, 1983 and defendants failed to comply with the requirements of the notice by that date.
- c. All facts stated in the notice are true.



d. (x) The notice included an election of forfeiture.

e. (x) A copy of the notice is attached and labeled Exhibit B.

9. (x) a. The notice referred to in Item 8 was served

() by personally handing a copy to defendant

() on (date)

() by leaving a copy with (name or description)(name) a person of suitable age or discretion, on (date) at defendant's business AND mailing a copy to defendant at his place of residence on (date) because defendant cannot be found at his residence or usual place of business.

(x) by posting a copy on the premises on (date): October 21, 1983 and giving a copy to a person residing at the premises AND mailing a copy to defendant at the premises on: October 21, 1983.

() because defendant's residence and usual place of business cannot be ascertained



OR

(x) because no person of suitable age or discretion can there be found.

(not for 3-day notice. See Civil Code section 1946 before using) by sending a copy by certified or registered mail addressed to defendant on (date):

b. () information about service of the notice on the other defendants is contained in attachment.

10. () Plaintiff demands possession from each defendant because of expiration of a fixed term lease.

11. (x) At the time the 3-day notice to pay rent or quit was served, the amount of rent due was \$4,173.00.

12. (x) The fair rental value of the premises is \$20.00 per day.

13. Plaintiff is entitled to immediate possession of the premises.

14. () Defendants' continued possession is malicious, and plaintiff is entitled to treble damages (State specific facts supporting this claim in attachment

14.)

15. (x) A written agreement between the parties provides for attorney fees.
16. (x) Defendants' tenancy is subject to the local rent control or eviction control ordinance of (city or county, title of ordinance, and date of passage): Los Angeles City Rent Stabilization Ordinance No. 154,237, approved 7/24/80.
- Plaintiff has met all applicable requirements of the ordinances.
17. () Other allegations are stated in attachment 17.
18. () Plaintiff remits to the jurisdictional limit, if any, of the court.

19. PLAINTIFF REQUIRES

- a. possession of the premises.
- b. () costs incurred in this preceeding.
- c. (x) past due rent of \$4,173.00
- d. (x) damages at the rate of \$20.00 per day.
- e. () treble the amount of rent and damages found due.
- f. (x) reasonable attorney fees.



- g. (x) forfeiture of the agreement.
- h. (x) other (specify): such other and further relief
at the court may deem just and proper.

I declare under penalty of perjury that
Defendant's address is within the Los
Angeles Judicial District.

...GARY B. TORPY, ESQ. . . /S/ GARY B. TORPY
(Signature of plaintiff or attorney)

VERIFICATION

(Use a different verification for if the verification is by an
attorney or for a corporation or partnership.)

I am the plaintiff in this proceeding and have read this
complaint. I declare under penalty of perjury under the
laws of the State of California that this complaint is true
and correct.

DATE: November 17, 1983

...ROBERT H. FRASER. . . /S/ ROBERT H. FRASER
(Signature of plaintiff)



ORIGINAL FILED
Municipal Court
Dec 13, 1983
LOS ANGELES JUDICIAL DIST.
EDWARD M. KRITZMAN, CLERK
DEPUTY

MAX ABRAMS
6253 Hollywood Blvd., Suite 822
Los Angeles, CA 90028
(213) 478-2530
Attorney for: DEFENDANTS

MUNICIPAL COURT OF THE LOS ANGELES JUDICIAL
DISTRICT
COUNTY OF LOS ANGELES, STATE OF CALIFORNIA

ROBERT H. FRASER)	
)	
Plaintiff,	)	Case No. A61036
)	
vs.	)	SUBSTITUTION OF
	)	ATTORNEY
)	
EUNICE RUSSELL et al.,)	
)	
Defendants.)	
)	

Defendants EUNICE RUSSELL and WILLIE JEAN
RUSSELL hereby substitute MAX ABRAMS as their
attorney of record in place of themselves.

Dated: Dec. 12, 1983 /s/ Willie Jean Russell
 WILLIE JEAN RUSSELL

/a/ Eunice Russell
 EUNICE RUSSELL

I accept the foregoing substitution.

Dated: Dec. 12, 1983

/s/ Max Abrams
MAX ABRAMS

ORIGINAL FILED
Municipal Court
Dec 13, 1983
LOS ANGELES JUDICIAL DIST.
EDWARD M. KRITZMAN, CLERK
DEPUTY

MAX ABRAMS
6253 Hollywood Blvd., Suite 822
Los Angeles, CA 90028
478-2530
Attorney for: DEFENDANTS

MUNICIPAL COURT OF THE LOS ANGELES JUDICIAL
DISTRICT
COUNTY OF LOS ANGELES, STATE OF CALIFORNIA

ROBERT H. FRASER)	
)	
Plaintiff,	)	Case No. A61036
)	
vs.	)	SUBSTITUTION OF
	)	ATTORNEY
)	
EUNICE RUSSELL et al.,)	
)	
Defendants.)	
)	

To the Clerk of the Court and to the plaintiff and his
attorney of record:

Please take notice that defendants herein request that the
case be tried by jury.

Dated: Dec. 13, 1983 /s/ Max Abrams
MAX ABRAMS, Attorney for
Defendants

MUNICIPAL COURT OF THE LOS ANGELES JUDICIAL
DISTRICT
COUNTY OF LOS ANGELES, STATE OF CALIFORNIA

ROBERT H. FRASER	)	Case No. A61036
)	
Plaintiff,	)	DECLARATION OF MAX
	)	ABRAMS IN SUPPORT OF
v.	)	MOTION TO VACATE
	)	JUDGMENT
EUNICE RUSSELL et al.,	)	Set for: Aug. 27, 1984
	)	Time: 9:45 a.m.
Defendants.	)	Courtroom: Division 2
)	

I, MAX ABRAMS, declare that:

1. I am a former attorney for the defendants in this action. The termination of actual representation was not affected in any way by the merits of the respective sides.

2. During such actual representation, Mr. Russell stated that there were numerous instances of what he felt were breaches of the warranty of habitability and grounds for damages, and that these matters needed to be prepared for the trial. I told him that probably the only realistic way to obtain some additional time to prepare would be for the defendants to voluntarily restore possession to the plaintiff prior to the commencement of trial, so that the litigation would then become a civil action without



entitlement to priority in trial setting rather than remain a special proceeding, as provided by C. C. sec. 1952.3(a)1 and Fish Constr. Co. v. Moselle Coach Works (1983 148 CA3d 654, 660, since possession would no longer be in issue, as discussed in Briggs v Electronic Memories and Magnetics Corp. (53 Cal.App.3d 900).

4. Mr. Russell stated that he intended to follow that procedure and that he would move out before the trial. I do not have a recollection of the date for which the trial was then set.

I declare under penalty of perjury that the foregoing is true and correct. Executed on August 25, 1984, at Los Angeles, California.

/S/ Max Abrams

MAX ABRAMS



MUNICIPAL COURT OF THE LOS ANGELES JUDICIAL
DISTRICT

COUNTY OF LOS ANGELES, STATE OF CALIFORNIA

FILED:
MUNICIPAL COURT, JAN 05, 1984
LOS ANGELES JUDICIAL DIST.
EDWARD H. KRITZMAN CLERK

Plaintiff: Robert Fraser

Defendant: Eunice Russell and Willie Jean Russell

CLERK'S NOTICE OF TRIAL Case No. A61036

This is to notify you that the above case has been set
(scheduled) for trial as shown below:

APPEAR AT THE LOCATION MARKED BELOW:

Division 20, Room 723, Courthouse, 7th Floor, 505 S.
Centre St.
Los Angeles, 90012

Appear on Date and at time shown below:
Feb. 1, 1984, 18:30 a.m.

CERTIFICATE OF MAILING

I am the clerk of the above-named court and not a party to
the above-entitled matter. On the date shown below, I
served this Clerk's Notice of Trial by placing a true copy
thereof in each of separate envelopes, which were
addressed as shown below, and then by sealing the



envelopes and depositing them, with first-class postage thereon fully prepaid, in the United States mail at Los Angeles, California.

I certify that the foregoing is true and correct.

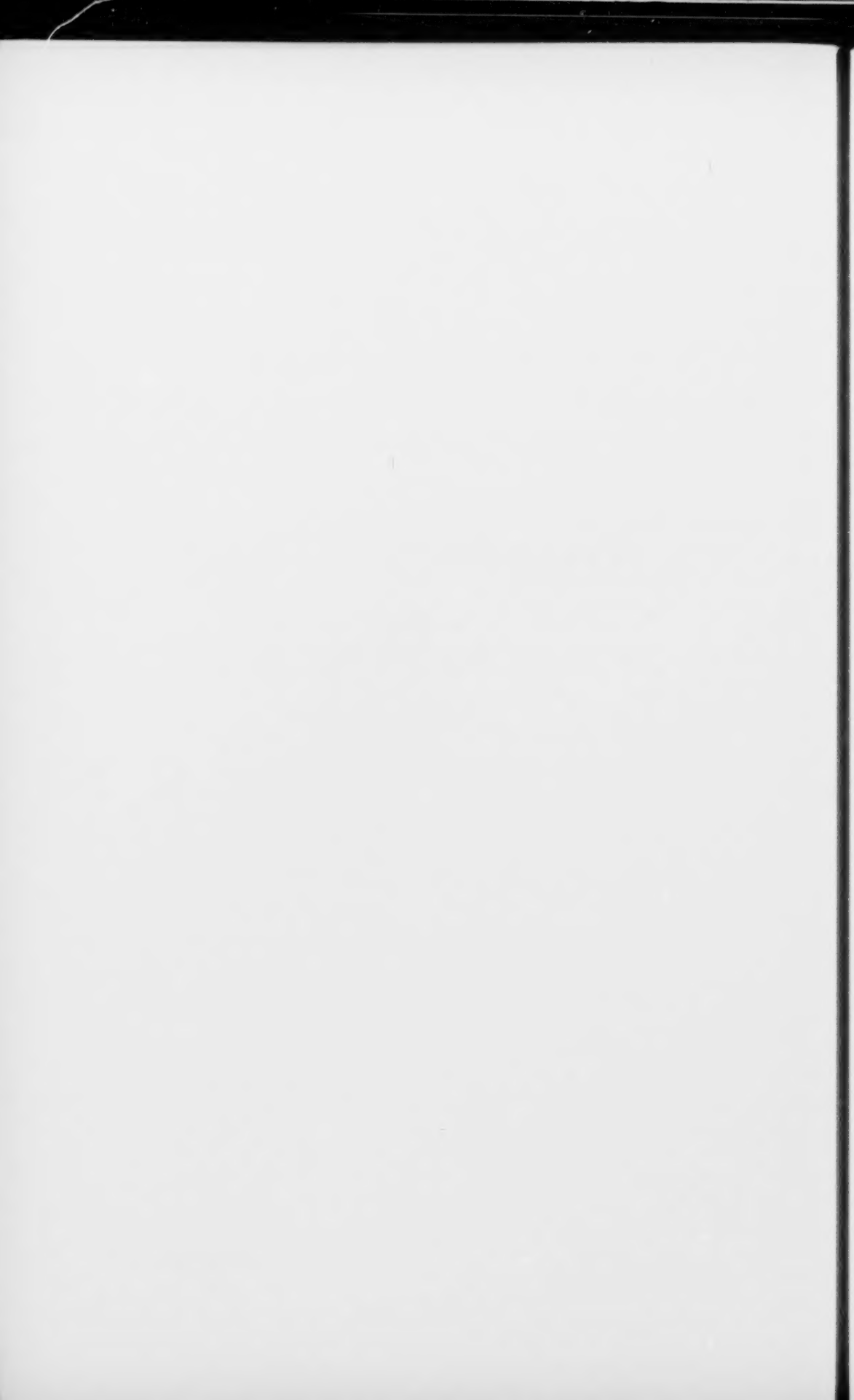
Dated and Mailed:
Jan. 5, 1984

EDWARD M. KRITZMAN
By /s/ S. SAYSON,
Deputy
nc

Gary B. Torpy, Esq.
11440 San Vicente Blvd. #100
Los Angeles, CA 90049

Eunice Russell
2023 S. Corning St., #8
Los Angeles, CA 90034

Willie Jean Russell
2023 S. Corning St., #8
Los Angeles, CA 90034



MUNICIPAL COURT OF THE LOS ANGELES JUDICIAL
DISTRICT

Fraser VS Russell, CASE No. A61036

COURT CONVENED WITH THE HONORABLE RALPH E.
BURNS, COMMISSIONER PRESIDING, AND M. KEELING
DEPUTY CLERK, PRESENT.

APPEARANCES:

FOR THE PLAINTIFF: X

FOR THE DEFENDANT: X

THE CAUSE, HAVING BEEN SET FOR TRIAL THIS DATE,
IS ORDERED:

() Off Calendar

() No appearance by either party.

() At the request of the plaintiff/defendant,

() in court. () per telecon. () letter.

() Cause is settled.

() Possession is no longer an issue.

() The cause is to be reset for trial in Division One.

() Cause is transferred to Division One, JURY TRIAL
REQUESTED.



(x) Continued to 3-7-84 AT 8:30 A.M. in DIV. 20.

() upon an () opposed Motion by/for () plaintiff

() unopposed () defendant () written stipulation

() oral stipulation

(x) Notice Waived.

() Plaintiff to give Notice.

() Defendant ot give Notice.

Other: _____

I certify that the foregoing minutes are true and correct.

M. Prentiss

FEB 01, 1984

DIVISION 20

(8/81)

MUNICIPAL COURT OF THE LOS ANGELES JUDICIAL
DISTRICT

Convened this A.M.;

present Honorable CLARENCE A. STROMWALL, Judge
and Snead, Deputy Clerk

Case No. A61036 Title: FRASER vs. RUSSELL

For Plaintiff: Torpy

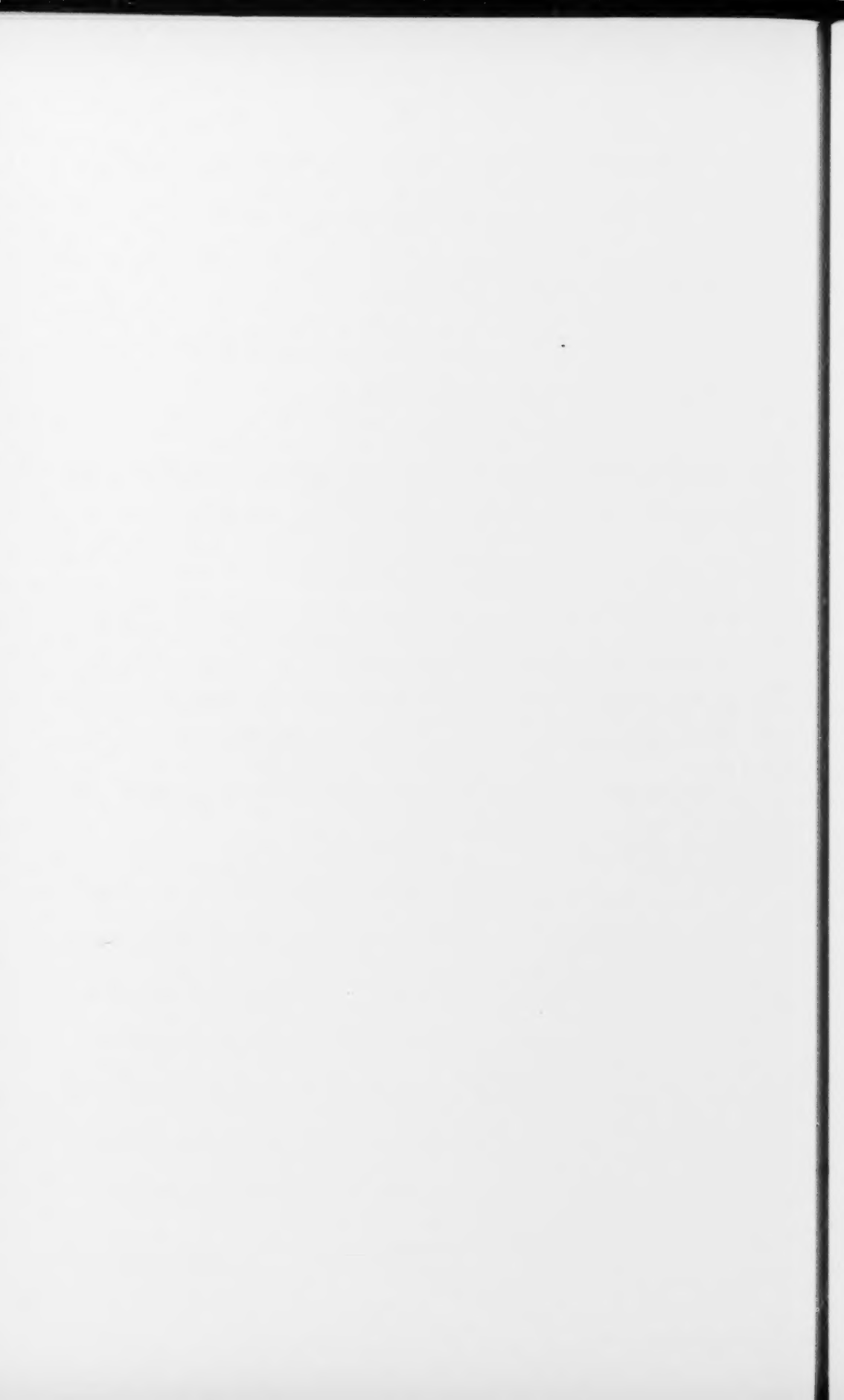
(Counsel of Record.)

(checked if present) For Defendant:

NATURE OF
PROCEEDING:

DISPOSITION

Transferred	Defendant's Attorney from for
Prode-up	Division 1
	Rochelle Stanton in court:
	Client states cannot be available
	today - Not prepared has other
	business "more pressing"
	Defendant's attorney prepared to
	proceed but Defendant failed to
	appear. Defendant's motion to



continue - denied. Defendant's
attorney's motion to be relieved
- Granted Judgment for
Plaintiff. [See attached minutes
& Judgment.]

/s/ Snead
MAR-7 1984

LAW AND MOTION - DIVISION 2

DATE: Mar. 7, 1984



MUNICIPAL COURT OF THE LOS ANGELES JUDICIAL
DISTRICT

COUNTY OF LOS ANGELES, STATE OF CALIFORNIA

HONORABLE Morton Roohmum, (x) Judge () Commissioner

F. Yamada , Deputy Clerk Case Number _____

Plaintiff(s)

Defendant(s)

APPEARANCES:

For the Plaintiff : _____ x

For the Defendant : _____ x

NATURE OF PROCEEDINGS: Trial Calendar Motion

STATUS OF CASE: Trial Set for _____

() Cause transferred hereto from Division _____.

Motion of _____ **Defendant opposed**

(x) for continuance () to vacate the trial setting

() to reset () to advance the trial date

() to reinstate jury fees

is (x) denied () granted

() The cause is ordered () continued () reset () advanced
to

_____ at _____ () A.M. () P.M. in Division _____.

() The trial setting is ordered vacated.



() Notice is waived.

() The Court orders notice to be given by: () Plaintiff.

() Defendant.

() The cause is ordered transferred to Division _____.

I certify that the foregoing minutes are true and correct.

EDWARD M. KRITZMAN

By /s/ Yamada

Division 1 Date of Proceedings: MAR 7 1984



IN THE MUNICIPAL COURT OF
LOS ANGELES JUDICIAL DISTRICT
COUNTY OF LOS ANGELES, STATE OF CALIFORNIA

CASE NUMBER: A61036

FRASER v RUSSELL In Division 2,

Honorable CLARENCE A. STROMWALL , Judge Presiding

() Stipulation and Order Appointing Temporary Judge filed.

This cause came on for trial on MAR-7 1984

FILED
MUNICIPAL COURT
MAR 7, 1984
LOS ANGELES JUDICIAL DIST.
BY EDWARD M. KRITZMAN, CLERK

GARY TORPY, appearing by attorney(s).

defendant(s) having failed to appear, proof having first
been made to the satisfaction of the court that each of
said defendants has had five/fifteen days notice of such
trial, and a jury trial having been waived, plaintiff(s)
applied to the court for judgment.

Witness(es) sworn for plaintiff(s): ROBERT H. FRASER

Exhibit(s) received in evidence for plaintiff(s): _____

The court, after having considered the evidence,

() found the amount of rent due the plaintiff(s) to be \$ __,

and assessed the damages for the unlawful detainer at \$__,
and determined that said sums should not be trebled and
ordered the following judgment: It is adjudged that on the
complaint,

plaintiff(s) ROBERT H. FRASER

defendant(s) EUNICE RUSSELL and WILLIE JEAN RUSSELL

() the restitution and possession of those premises situated
in the County of Los Angeles, State of California, and
more particularly described as: _____

(x) LEASE FORFEITED and the sum of \$ __ and \$ __,
attorney fees with costs as provided by law in the sum of
\$__ and that the lease or agreement under which the
aforesaid property is held be, and the same is hereby
declared forfeited.

() the possession of the following described personal
property, to wit: _____
or its value, which is fixed at \$__ in case possession
of said personal property cannot be had; and in either
event the sum of \$__ damages, and \$__ attorney fees,
\$__ interest with cost as provided by law.
corrected nunc pro tunc (11-14-84)



(x) the sum of \$6,733.00, and \$ 495.00 attorney fees, and
\$ -0- interest with costs provided by law.

Costs as taxed or ascertained \$x /s/ Snead

EDWARD KRITZMAN,
Deputy Clerk

I certify the foregoing CLERK OF THE ABOVE
NAMED COURT

Judgment was entered By /s/ Snead
MAR-7 1984 Original Deputy
filed.

MINUTES AND JUDGMENT

DEFENDANT FAILING TO APPEAR-TRIAL



GOODMAN and HECHT
Attorneys at Law
19055 Ventura Blvd., Suite 900
Encino, California 91436
(213) 872-2716 [current]
(213) 501-2828

(Current address:
18321 Ventura Blvd.
Tarzana, CA 91356
(213) 872-2716

Attorneys for: Plaintiff

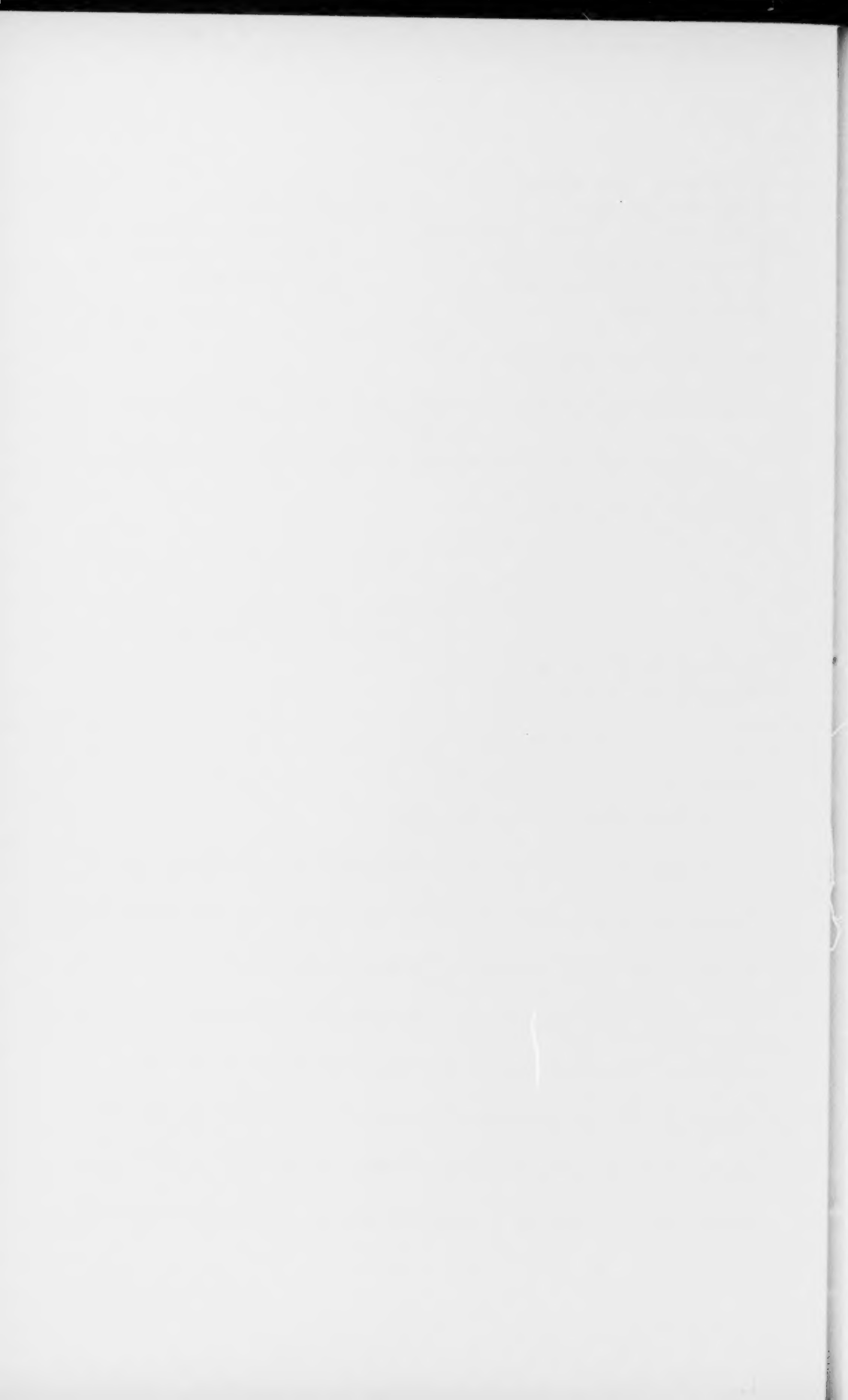
MUNICIPAL COURT OF THE LOS ANGELES JUDICIAL
DISTRICT
COUNTY OF LOS ANGELES, STATE OF CALIFORNIA

ROBERT H. FRASER)	
)	
Plaintiff,	)	Case No. A61036
)	
vs.	)	DECLARATION OF
	)	ROCHELLE STANTON
EUNICE RUSSELL and)	
WILLIE JEAN RUSSELL,)	
)	
Defendants.)	
_____)		

I, Rochelle Stanton, declare:

I am an attorney duly licensed to practice law in California and I have personal knowledge of the following matters and could competently testify as follows:

Willie Jean Russell and Eunice Russell came to me to represent them in the within cause several weeks prior to the trial set for February 1, 1984. I received no fee from them at that time or at any time. I agreed to represent them and I prepared a substitution of attorneys document



which I caused to be filed. Subsequent to March 7, 1984, I gave Mr. Russell my signed Substitution of Attorney so that he could obtain other counsel.

On February 1, 1984, I appeared for trial but the Russells did not. I requested and obtained a continuance from the court to March 7, 1984. Thereafter, I attempted to notify the Russells of the new trial date, but they had moved without notifying me. I telephoned them, but their telephone had been disconnected and there was no forwarding number. I mailed correspondence to them at their last known address and such correspondence was to advise them of the trial.

Thereafter, on March 6, 1984, I received a telephone call from Eunice Russell concerning the case and I told him of the trial and requested his appearance to testify. Mr. Russell advised me that he would not attend the trial because of other pressing matters on March 7, 1984. We also had a dispute as to the need for testimony of neighbors on the issue of habitability. We had photographs, and in my professional opinion, we did not need testimony from neighbors and we were prepared for trial.



On March 7, 1984, when the case was called for trial, I requested a continuance, but the court only agreed to trail the case to the afternoon. I telephone Mr. Russell at the residence of some friends where he was staying and I begged him to come to court when the case was called at 1:30 P.M. He refused. I then told him that I would ask the court to relieve me as counsel. He stated that this would not be necessary because I was fired.

Mr. Russell was to my knowledge, not working on March 7, 1984, and there was no conflict with employment or business.

Executed this 16th day of August, 1984, at Los Angeles, California.



JOE C. HOPKINS
Attorney at Law
2975 Wilshire Blvd.
Suite 518
Los Angeles, CA 90010
(213) 387-7359

Attorneys for: Defendants

MUNICIPAL COURT OF THE LOS ANGELES JUDICIAL
DISTRICT
COUNTY OF LOS ANGELES, STATE OF CALIFORNIA

ROBERT H. FRASER	)	Case No. A61036
)	
Plaintiff,	)	DECLARATION IN SUPPORT
	)	OF MOTION TO SET ASIDE
vs.	)	AND VACATE JUDGMENT
	)	AND ENTER ANOTHER
	)	JUDGMENT
EUNICE RUSSELL and)	
WILLIE JEAN RUSSELL,)	
	)	Date: August 13, 1984
Defendants.	)	Time: 9:45 A.M.
	)	Div: 2
)	

I, EUNICE RUSSELL, do declare:

1. In December, 1983, I retained attorney Rochelle Stanton to represent me in a landlord/tenant dispute. I explained to her that I had met all of the requirements of my rental agreement and did not owe the back rent, which my landlord claimed. She reviewed my papers and agreed to take my case. (She advised me of her fee.) I paid the



fee and signed a retainer agreement and substitution of Attorney on December 16, 1983.

2. I had originally filed an answer in the case without an attorney.

3. On January 30, 1984, I received a telephone call from Attorney Stanton stating that the trial date was the next day, February 1, 1984, at 8:30 A.M.

4. Since I had not spoken with Ms. Stanton but once about the case, I felt that she was unprepared, and I was not only unprepared, but had to work that next day, and needed more than a few hours notice to get off work to go to court.

5. I later discovered that Ms. Stanton had requested to be relieved as counsel at the trial, and judgment was granted for plaintiff for an amount which had no relationship to any rent I had ever owed the plaintiff for an amount of \$13,963.45.

6. The above-mentioned principal amount, and the \$1,500.00 in attorney's fees for a two minute unlawful detainer hearing, plus interest, are all exorbitant and incorrect. I have never owed \$15,963.45, in rents to

plaintiff.

I do declare under penalty of perjury that the foregoing is true and correct, and that this declaration was executed on this 1st day of August, 1984, at Los Angeles County, California.

/s/ Eunice Russell

EUNICE RUSSELL